

CHRISTOPHER TAVAUGHN JACKSON,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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his sentence vacated. Although, petitioner's pro se motion does not discuss how *Miller* affects him other than to say it does, this Court will consider *Miller*'s impact. This Court previously denied petitioner's § 2255 motion on the grounds that *United States v. Powell*, 691, F.3d 554 (4th Cir. 2012), held that the right announced by the Supreme Court in *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010) is procedural and is not retroactively applicable to cases on collateral review. However, *Miller* has not changed the law as it applies to petitioner. Therefore this Court denies petitioner's motion.


In *Miller*, the Fourth Circuit held that *Teague*'s bar on the retroactive application of new rules did not apply in *Miller*'s case. WL 4441547 at *4. However, the court in *Miller* also held that *Powell* did not control its outcome because the government waived the statute of limitations as it applied to *Miller*. *Id.* at *5 ("To determine whether the Court had the power to hear the merits of *Powell*'s claim it first had to determine whether *Powell* could get around the statute-of-limitations problem.") Section 2255(f)(3) provides for a one-year limitation that "shall run from the latest of . . . the date on which the right asserted was initially recognized by the Supreme Court, if that right has been . . . made retroactively applicable to cases on collateral review." "Simply put, the Court had to determine whether *Carachuri* was retroactive to decide if the motion filed by *Powell* was timely." *Miller*, WL 4441547 at *5. Here, like in *Powell*, the government has not waived the statute of limitations under § 2255(f)(3). *Simmons* is not a Supreme Court case. Therefore petitioner's motion is untimely under § 2255(f)(3). *Miller* has not changed the law in this regard. Further, *Miller* does not change anything in petitioner's circumstances that would change the Court's earlier determination on the untimeliness of his § 2255 motion under § 2255(f)(4) or the principles of equitable tolling. Accordingly, petitioner's motion for reconsideration is denied.

CONCLUSION

For the foregoing reasons, petitioner's motion for reconsideration is DENIED.

SO ORDERED.

This the 27 day of October, 2013.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE